

ORIGINAL

8/7

Form 16
(Order 11, rule 20)

IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY

FEDERAL COURT OF AUSTRALIA N.S.W. DISTRICT REGISTRY FILED/RECEIVED (K) 30 JUN 2011 Fee Paid \$
--

No. NSD 499 of 2011

BETWEEN

SEAN FOLEY
Applicant

and

GUNNS LIMITED ACN 009 478 148
Respondent

DEFENCE

1. The Respondent does not plead to paragraph 1 of the Amended Statement of Claim, as that paragraph does not allege any matter against the Respondent.
2. In response to paragraph 2 of the Amended Statement of Claim, and to the extent that allegations are made against it, the Respondent:
 - (a) does not admit sub-paragraphs 2(a), 2(b) and 2(c); and
 - (b) denies sub-paragraph 2(d).
3. The Respondent does not admit paragraph 3 of the Amended Statement of Claim, and repeats paragraph 2 above.
4. In response to paragraph 4 of the Amended Statement of Claim, the Respondent:
 - (a) admits sub-paragraphs 4(a)-(g) and 4(h)(ii); and
 - (b) as to sub-paragraph 4(h)(i), admits that it was the controlling entity of a number of subsidiary corporations, but otherwise does not admit the allegations in that sub-paragraph.
5. In response to paragraph 5 of the Amended Statement of Claim, the Respondent:

CT

Filed on behalf of the Respondent by
Blake Dawson
Level 36, 225 George Street
Sydney NSW 2000

Tel: (02) 9258 6000
DX: 355
Fax: (02) 9258 6999
Email: john.emmerig@blakedawson.com
Ref: JME 02 2021 4930

- (a) denies that it engaged in the activities described in sub-paragraph 5(a) for all of the years in the period from 1 January 2000 to the present, and says that it did not conduct any woodchip production from hardwood plantation forests and softwood plantation forests until after 1 June 2001; and
 - (b) admits that it engaged in the activities described in sub-paragraphs 5(b) and 5(c) in the period from 1 January 2000 to the present.
6. The Respondent denies paragraph 6 of the Amended Statement of Claim and says that:
- (a) it did not commence exporting woodchips until August 1995;
 - (b) in the 2006/07 financial year, its managed investment scheme (MIS) business segment contributed more to its earnings before interest and tax (EBIT) than its Forest Products segment; and
 - (c) in the financial years after 2001/02, other than the 2006/07 financial year, its Forest Products segment was the largest contributor to its revenue and EBIT.
7. In response to paragraph 7 of the Amended Statement of Claim, the Respondent:
- (a) repeats and relies upon sub-paragraph 6(a) hereof;
 - (b) admits that from the 2001/02 financial year, Japan has constituted the largest export market for its woodchips by volume of woodchips sold and by sales revenue earned; and
 - (c) otherwise denies the matters alleged in paragraph 7 for the period commencing 1 January 1984 to the end of the Relevant Period.
8. In response to paragraph 8 of the Amended Statement of Claim, the Respondent:
- (a) admits the allegations contained in sub-paragraphs 8(a), 8(b) and 8(c) for the period commencing 1 July 2007 to the end of the Relevant Period;
 - (b) as to sub-paragraph 8(d):
 - (i) denies that for the period commencing 1 July 2007 to the end of the Relevant Period there was no domestic market for its woodchips;
 - (ii) says that for the period commencing 1 July 2007 to the end of the Relevant Period there was a domestic market for its woodchips;
 - (iii) says the domestic market for its woodchips was relatively small compared to the export market for its woodchips; and
 - (iv) otherwise denies sub-paragraph 8(d) for the period commencing 1 July 2007 to the end of the Relevant Period.

9. The Respondent denies paragraph 9 of the Amended Statement of Claim and says that during the period from 1 July 2007 to the end of the Relevant Period:

- (a) sales of woodchips by the Respondent to its Japanese customers were denominated in both Australian Dollars and United States Dollars;

Particulars

A summary of the volume of the Respondent's woodchip sales to Japan that were denominated in Australian Dollars and United States Dollar, respectively, for each half of the 2008, 2009 and 2010 financial years, is at **Schedule A** to this Defence.

- (b) the pricing of sales of woodchips by the Respondent to its Japanese customers was not fixed, but varied according to a number of factors;

Particulars

The pricing varied from customer to customer and depended upon the particular type or grade of woodchips being sold and, on occasion, the "spot" price that the Respondent could achieve for sales to particular customers.

- (c) the agreed price with each customer was, on occasion, fixed for a particular "spot" sale, rather than for the entire calendar year; and
- (d) the pricing of sales of woodchips by the Respondent to its Japanese customers was agreed per bone dry metric tonne (**BDMT**) and by bone dry unit (**BDU**).

10. The Respondent denies paragraph 10 of the Amended Statement of claim and says that the prices it obtained for the export of its woodchips to Japan varied from customer to customer and depended on the type or grade of woodchip being exported and, on occasion, the "spot" price that the Respondent could achieve for sales to particular customers.

Particulars

A summary of the weighted average prices that the Respondent obtained for the export of eucalyptus and pine woodchips to Japan for each half of the 2007, 2008 and 2009 calendar years, is at **Schedule B** to this Defence.

11. The Respondent:

- (a) admits sub-paragraphs 11(a), 11(b), 11(c), 11(d), 11(f) and 11(g) of the Amended Statement of Claim;
- (b) denies subparagraph 11(e) and says that Itochu Corporation was a customer of the Respondent, and that Marusumi Paper Company Ltd was the end user of products that the Respondent sold to Itochu Corporation.

12. In response to paragraph 12 of the Amended Statement of Claim, the Respondent:

- (a) admits that from 1 July 2007 to the end of the Relevant Period the majority of sales of woodchips by the Respondent to customers in China, Korea, the territory known as

Taiwan or as Chinese Taipei and Indonesia were denominated in United States Dollars;
and

- (b) otherwise denies paragraph 12 of the Amended Statement of Claim.
13. The Respondent denies paragraph 13 of the Amended Statement of Claim and says that there were occasions during the period from 1 July 2007 to the end of the Relevant Period, that the prices it obtained for sales of its woodchips to customers in China and Korea were higher, in Australian Dollar terms, than the prices it obtained for sales of its woodchips to its Japanese customers in the same period.
 14. The Respondent admits paragraph 14 of the Amended Statement of Claim.
 15. The Respondent admits paragraph 15 of the Amended Statement of Claim.
 16. In response to paragraph 16 of the Amended Statement of Claim, the Respondent:
 - (a) admits the matters alleged in sub-paragraphs 16(a) and (b);
 - (b) denies the matter alleged in sub-paragraph 16(c);
 - (c) says that its reported NPAT for FY09 was \$56.2 m; and
 - (d) says that its underlying NPAT for FY09 (that is, its non-statutory reported NPAT) was \$52.5 m.
 17. In response to paragraph 17 of the Amended Statement of Claim, the Respondent:
 - (a) admits sub-paragraph 17(a);
 - (b) admits that the figure in sub-paragraph 17(a)(i) was 78% of the total reported revenue figure, and that the figure in sub-paragraph 17(a)(ii) was 82% of the total reported EBIT figure, and otherwise does not admit sub-paragraph 17(b).
 18. The Respondent admits paragraph 18 of the Amended Statement of Claim.
 19. The Respondent admits paragraph 19 of the Amended Statement of Claim.
 20. The Respondent admits paragraph 20 of the Amended Statement of Claim.
 21. The Respondent admits paragraph 21 of the Amended Statement of Claim.
 22. The Respondent admits paragraph 22 of the Amended Statement of Claim.
 23. The Respondent admits paragraph 23 of the Amended Statement of Claim.
 24. In response to paragraph 24 of the Amended Statement of Claim, the Respondent:

- (a) admits that during the Relevant Period it did not make statements to the ASX in the terms pleaded in sub-paragraphs 24(a), 24(b), 24(c) or 24(d) of the Amended Statement of Claim;
- (b) says that during the Relevant Period, the Respondent made disclosures to the ASX on 31 August 2009, 7 September 2009, 21 September 2009, 1 October 2009, 13 October 2009, 11 November 2009, 20 November 2009, 25 November 2009, 27 November 2009, 23 December 2009, and 4 January 2009 of information pertaining to the affairs of the Respondent.

Particulars

On 31 August 2009, Gunns made a disclosure to the ASX which included the following information:

- (i) wood fibre sales were largely dependant on the Japanese market and on economic conditions which were expected to remain weak through at least the course of the first quarter of the 2009/2010 financial year with the strengthening Australian dollar adversely impacting on the company's competitive position;
- (ii) the Respondent had acquired ITC Timber Pty Limited for an enterprise value of \$100M, subject to regulatory approval and other customary conditions;

On 7 September 2009, the Respondent made a disclosure which included information in the form of a booklet published to shareholders who were eligible to participate in a retail entitlement offer. That document contained, among other things, details of risks of investing in shares in the Respondent. Those risks were stated to include the following:

- (i) general risks – including: economic conditions in Australia and globally; changes in Australian fiscal, monetary and regulatory policies; local and international stock market conditions; a range of operational risks, and major world events;
- (ii) operational risks – including that:
 - (A) a significant portion of the Respondent's forest products revenues were generated from export sales;
 - (B) whilst the Respondent exported to a number of different countries, export sales were predominantly to Japan;
 - (C) the Respondent was exposed to variations in export volumes and export prices;
 - (D) demand for woodchips in Japan declined materially in the second half of the 2009 financial year;
 - (E) variations in volumes and pricing could be caused by changes in the Japanese pulp and paper industry, increased supply, increased costs for importers, changes in government policy toward supplying pulpwood, exchange rate movements and pulp prices;
 - (F) customers in markets for timber products had an increasing preference for environmental certification of products, and that whilst the Respondent's products were accredited under the Programme for Endorsement of Forest Certification (PEFC) standard, there was a risk that

customers may subsequently require alternative certification systems;

- (G) the pulp and paper industry in Japan had relatively high domestic pricing for paper and paper products supported by market trading practices, and that if the structure were to change, prices may be impacted which could adversely affect the Respondent's earnings;
- (H) that because its export base was concentrated, the Respondent could sustain adverse financial consequences if key contracts were terminated or not renewed;
- (I) the Respondent's top five hardwood export customers accounted for the majority of its hardwood fibre output and that while the Respondent had had relationships with the majority of those customers for over 35 years, these could be no assurance that those contracts would continue to be renewed in the future, or in the event such contracts were renewed, that the terms of such contracts would be favourable;
- (J) that the sustainability of growth and the level of profit margins from operations were dependant on many factors outside of the Respondent's control, and that margins in all the markets in which the Respondent operated were likely to be subject to continuing but varying margin pressures.

(iii) market risks, including:

- (A) the majority of the Respondent's export sales were denominated in Australian dollars meaning that there was minimal direct impact from exchange rate fluctuations on the value of the Respondent's export revenues but that even where the Respondent's export revenues were denominated in Australian dollars, a strong Australian dollar could make the Respondent's products less competitive than alternative US dollar products, which – in the absence of continued strong global demand supporting prices – could result in downward pressures on volumes or prices, negatively impacting the Respondent's revenues and/ or margins; and
- (B) the Respondent was also exposed to exchange rate fluctuations on the Australian dollar value of foreign currency denominated purchases in relation to the Mill Project, that the Respondent managed its foreign currency exposures using hedging instruments in accordance with risk management policies, that there could be no assurance the Respondent would successfully manage its exposure to exchange rate fluctuations or that exchange rate fluctuations would not have a material adverse effect on the business, its financial position or financial performance.

On 21 September 2009, the Respondent made a disclosure to the ASX which included information to the effect that it had submitted a conditional proposal for the acquisition of certain forestry assets of Timbercorp Limited but, given the conditional nature of the proposal, was uncertain as to how its proposal may develop;

On 1 October 2009, the Respondent made a disclosure to the ASX which included information to the effect that it had entered into discussions with the Recievers of Great Southern Managers Australia Limited (Administrators Appointed)(Recievers and Managers Appointed) (GSMAL) and was developing a proposal to replace GSMAL as the responsible entity of certain forestry managed investment schemes;

On 13 October 2009, the Respondent made a disclosure to the ASX which included a copy of its annual report for the 2008/09 financial year. That report stated, among other things, that the instability of the global financial markets impacted the Respondent at a number of levels - through its effects on markets for wood fibre products, the impacts on confidence in the managed investment sector and constraints on funding for business development – and these factors had been adverse in their effects during the 2009 financial year and remained critical issues for the Respondent's current operating environment;

On 11 November 2009, the Respondent made a disclosure to the ASX which included the following information:

- (i) the global financial crisis which developed through the 2009 year had been a difficult period for the Respondent with impacts on demands for the Respondent's products from Asian markets;
- (ii) the strength of the Australian dollar in the Respondent's markets had also had an effect on the operating margins of the company;
- (iii) the Respondent completed a capital raising transaction in the course of the year to strengthen its balance sheet;
- (iv) the Respondent had sold a plantation forest at a value of \$173M which was completed in February 2009, and the proceeds of which were used to retire debt;
- (v) the Respondent was seeking to acquire the ITC timber business;
- (vi) the Respondent was faced with a difficult short term outlook for its main wood fibre business;
- (vii) activity levels in the woodchip business slowed in the second half of the 2009 year, primarily driven by a reduction in economic activity in the Japanese economy from January 2009;
- (viii) the situation in sub-paragraph (vii) above had not improved in the course of the 2009 calendar year and current indications were that improvements in the 2010 year would be minor;
- (ix) the substantial revaluation of the Australian dollar had impacted on the sustainability of the Respondent's export business and the Respondent's ability to service the demand for wood fibre in growing markets;
- (x) trading conditions in the solid wood business had continued at similar levels to the second half of 2009 but that it was not expected an improvement across this business would be experienced until early 2010 when prices were anticipated to firm;
- (xi) the restructuring process for the integration of the Auspine and WA Jarrah business with the Tasmanian hardwood business had cost approximately \$9.5M;
- (xii) revenue from the managed investment scheme business in the 2009 year was reported at \$68.4M and the sales of these managed

investment products was significantly impacted by corporate failures of major MIS industry operators in the latter part of the year;

- (xiii) the Respondent was currently engaged in a process focussed on the assets of Great Southern group which may provide an opportunity for expansion in plantation management and processing operations in WA and the Green Triangle, and the outcome of that process was expected in the next two months;
- (xiv) the Respondent had signed a long term lease on a Port of Portland site to construct a hardwood woodchip facility which would be operational in the third quarter of calendar year 2010;
- (xv) the Respondent's businesses based in the Tasmanian market had performed solidly in a stable economy;
- (xvi) a refit and expansion had occurred in relation to the Launceston merchandising site; and
- (xvii) export markets for the development of the Tamar Ridge wine business were difficult due to global economic conditions and currency factors.

On 20 November 2009, the Respondent made a disclosure to the ASX which included that the Respondent had entered into final negotiations and expected to enter into an agreement with the Receivers of GSMAL for Gunns Plantations Limited to replace GSMAL as responsible entity of all or a majority of certain GSMAL forestry managed investment schemes, which acquisition would be funded from cash at hand and existing facilities but that the funding requirement was yet to be determined;

On 25 November 2009, the ACCC announced that it opposed the Respondent's acquisition of ITC Timber Pty Limited and, on the same day, the Respondent made a disclosure to the ASX that it intended to reformulate aspects of its proposal in relation to the acquisition;

On 27 November 2009, the ACCC announced that it would not oppose the revised proposed acquisition of ITC Timber Pty Limited and the Respondent made a disclosure to the ASX on 4 December 2009 that it had completed the acquisition for \$88.5M;

On 23 December 2009, the Respondent made a disclosure to the ASX that growers in eight forestry managed investment schemes of GSMAL had voted in favour of the Respondent's proposal for Gunns Plantations Limited to become the responsible entity for those schemes and to effect a restructure of those schemes. It was also disclosed to the ASX that the Respondent expected the transaction to be EPS accretive in the 2010 financial year and that a meeting for a 2006 GSMAL scheme was adjourned to 4 January 2010;

On 4 January 2009, the Respondent made a disclosure to the ASX that court approval for Gunns Plantations Limited to become the responsible entity for the aforementioned eight GSMAL forestry managed investment schemes had been obtained on 31 December 2009 and that Gunns Plantations Limited was now the responsible entity, and that an application in relation to the 2005 scheme was expected to be heard on 5 January 2009.

- (c) says that prior to or during the Relevant Period the Respondent had not published to the ASX a forecast for 1H10;

- (d) says that in the Relevant Period the global financial crisis contributed to the volatility of the markets in which the Respondent operated – including by impacting on, among other things, exchange rates and movements in the Australian dollar against other currencies, consumer demand, the availability of finance and credit in foreign markets and domestically, and the gross domestic product of the export and domestic markets in which the Respondent was operating – and this was known to the market at all material times;
 - (e) says that in early November 2009, the Respondent formed the view that there was a difficult short term outlook for its main wood fibre business for the first half of the 2009/10 financial year (1H10) and that the extent of the impact for 1H10 as well as the full extent of the likely profit performance of the balance of the Respondent's business for the 1H10 results was not at that time sufficiently clear;
 - (f) says that the 11 November 2009 disclosure to the ASX, particularised in sub-paragraph 24(b) above, was made in part in response to the formation of that view;
 - (g) says that following a board meeting of the Respondent on 11 November 2009, the Respondent took steps to attempt to prepare a forecast of its 1H10 results but that process was not completed prior to the announcement to the ASX of the first half results on 22 February 2010; and
 - (h) says the Respondent was under no obligation to make the disclosures alleged in sub-paragraphs 24(a), 24(b), 24(c) and 24(d) of the Amended Statement of Claim, or if it was required to make disclosures (which is denied), it was not required to make disclosures beyond those it made in the Relevant Period insofar as they pertained to the content of those sub-paragraphs, because the Respondent did not have the necessary information to do so and/or the information available was:
 - (i) information that a reasonable person would not expect to be disclosed; and
 - (ii) information that was confidential; and
 - (iii) information:
 - (A) which was supposition or insufficiently definite; and/or
 - (B) pertaining to matters the subject of incomplete proposals or negotiation; and/or
 - (C) generated for the internal management purposes of the Respondent;
- and
- (i) otherwise denies the matters pleaded in paragraph 24.

25. In response to paragraph 25 of the Amended Statement of Claim, the Respondent:
- (a) denies the allegations made in that paragraph; and
 - (b) repeats its response to paragraph 24 of the Amended Statement of Claim.
26. In response to paragraph 26 of the Amended Statement of Claim, the Respondent:
- (a) repeats paragraph 24 above;
 - (b) says that a number of analysts that published estimates of the Respondent's 1H10 results during the Relevant Period were of the view that there would be a material decrease in the Respondent's NPAT for 1H10; and

Particulars

1. The following analysts identified in the Amended Statement of Claim published estimates of the Respondent's net profit for 1H10 during the Relevant Period that were materially below the Respondent's actual results for 1H09 and 2H09:
 - (a) Bell Potter Securities Limited (making estimates in the period from October 2009-February 2010 of \$7.2m, \$10.8m and \$8.1m for the NPAT for 1H10, such estimates representing a decline of 79%, 68% and 76% respectively from the reported NPAT for 1H09 (\$33.6m) and a decline of 68%, 52% and 64% respectively from the reported NPAT for 2H09 (\$22.6m));
 - (b) UBS Securities Australia Ltd (making an estimate in December 2009 of \$10.8m for the NPAT for 1H10, such estimate representing a decline of 68% from the reported NPAT for 1H09, and a decline of 52% from the reported NPAT for 2H09);
 - (c) Macquarie Securities (Australia) Ltd (making an estimate in January 2010 of \$10.5m for the NPAT for 1H10, such estimate representing a decline of 69% from the reported NPAT for 1H09, and a decline of 54% from the reported NPAT for 2H09); and
 - (d) RBS Morgans Limited (making an estimate in February 2010 of \$18.2m for the NPAT for 1H10, such estimate representing a decline of 46% from the reported NPAT for 1H09, and a decline of 20% from the reported NPAT for 2H09).
2. The relevant reports published by the Analysts during the Relevant Period that contain estimates of the Respondent's 1H10 results including with respect to revenue, EBIT and NPAT are in Schedule B to the Amended Statement of Claim.

- (b) otherwise does not admit paragraph 26 of the Amended Statement of Claim.
- 27. In response to paragraph 27 of the Amended Statement of Claim, the Respondent:
 - (a) repeats paragraphs 24-26 above,
 - (b) says that its share price did not change materially in response to either the matters disclosed to the ASX in the Relevant Period that are pleaded in paragraph 24 above, or the analyst reports pleaded in paragraph 26 above; and
 - (c) otherwise does not admit paragraph 27 of the Amended Statement of Claim.
- 28. In response to paragraph 28 of the Amended Statement of Claim, the Respondent:
 - (a) repeats paragraphs 24 and 25 above; and
 - (b) otherwise does not admit the allegations in paragraph 28 of the Amended Statement of Claim.
- 29. The Respondent denies paragraph 29 of the Amended Statement of Claim and repeats and relies upon paragraphs 24 and 25 hereof.
- 30. In response to paragraph 30 of the Amended Statement of Claim, the Respondent:
 - (a) admits that during the Relevant Period it did not make statements to the ASX in the terms pleaded in sub-paragraphs 24(a) – (d) of the Amended Statement of Claim;
 - (b) repeats and relies upon paragraphs 24 and 25 hereof; and
 - (c) otherwise denies paragraph 30.
- 31. The Respondent denies paragraph 31 of the Amended Statement of Claim.
- 32. In response to paragraph 32 of the Amended Statement of Claim, the Respondent:
 - (a) admits that at all times during the Relevant Period it was under a statutory duty to comply with the continuous disclosure requirements of section 674(2) of the Act and ASX Listing Rule 3.1; and
 - (b) otherwise denies the matters alleged in paragraph 32.
- 33. The Respondent admits paragraph 33 of the Amended Statement of Claim.
- 34. In response to paragraph 34 of the Amended Statement of Claim, the Respondent:
 - (a) says that on 29 September 2008, it represented that:

- (i) it had implemented a Continuous Disclosure Policy to ensure that it met its continuous disclosure obligations under the ASX Listing Rules and the Act; and
 - (ii) its board was committed to ensuring that shareholders were informed of all major developments affecting the consolidated entity's state of affairs; and
 - (b) otherwise denies the matter alleged at subparagraph 34(a); and
 - (c) admits subparagraph 34(b).
35. The Respondent admits paragraph 35 of the Amended Statement of Claim.
36. In response to paragraph 36 of the Amended Statement of Claim, the Respondent:
- (a) says that on 29 September 2009, it represented that:
 - (i) it had implemented a Continuous Disclosure Policy to ensure that it met its continuous disclosure obligations under the ASX Listing Rules and the Act; and
 - (ii) its board was committed to ensuring that shareholders were informed of all major developments affecting the consolidated entity's state of affairs; and
 - (b) otherwise denies the matters alleged at paragraph 36.
37. In response to paragraph 37 of the Amended Statement of Claim, the Respondent:
- (a) repeats and relies upon paragraphs 32, 34 and 36 hereof;
 - (b) in relation to the representations set out in paragraphs 32, 34 and 36 above and also in relation to the representations pleaded in paragraphs 32, 34 and 36 of the Amended Statement of Claim (if those representations were made, which is denied to the extent outlined above):
 - (i) does not admit that such representations were made in relation to a financial product or a financial service within the meaning of section 1041H(1) of the Act;
 - (ii) denies that the alleged representations were made in trade or commerce, in relation to financial services within the meaning of section 12DA of the ASIC Act; and
 - (iii) says that if (which is denied) such representations were made in trade or commerce in relation to financial services within the meaning of section 12DA of the ASIC Act, then s52 of the TPA does not apply by reason of s51AF of the TPA, but otherwise admits that such representations were made in trade or commerce within the meaning of s52 of the TPA; and

- (c) otherwise denies the matters alleged in that paragraph.

38. In response to paragraph 38 of the Amended Statement of Claim, the Respondent:

- (a) repeats and relies upon paragraphs 32, 34 and 36 hereof;
- (b) denies that the representation alleged in paragraph 32 of the Amended Statement of Claim is a representation as to a future matter within the meaning of section 769C(1) of the Act, section 12BB of the ASIC Act or section 51A of the TPA;
- (c) denies that the representation alleged in paragraphs 34(a) and 36 of the Amended Statement of Claim that the Respondent had implemented continuous disclosure guidelines was a representation as to a future matter within the meaning of section 769C(1) of the Act, section 12BB of the ASIC Act or section 51A of the TPA;
- (d) denies that the representation alleged in paragraph 34(b) was a representation as to a future matter within the meaning of section 769C(1) of the Act, section 12BB of the ASIC Act or section 51A of the TPA; and
- (d) says that if (which is denied) it made the representations referred to in paragraphs 34(a) or 36 that it would abide by continuous disclosure guidelines and ensure that it met its continuous disclosure obligations under the ASX Listing Rules and the CA, then it had a reasonable basis for doing so.

Particulars

The Respondent intended at all material times to abide by its continuous disclosure guidelines and to meet its continuous disclosure obligations.

The Respondent had in place a continuous disclosure policy that was consistent with its continuous disclosure obligations, and that policy was implemented by senior management.

39. The Respondent denies paragraph 39 of the Amended Statement of Claim.

40. In response to paragraph 40 of the Amended Statement of Claim, the Respondent:

- (a) admits that during the Relevant Period the Applicant acquired 12,000 of the Respondent's shares; and
- (b) does not admit that during the Relevant Period the Group Members acquired shares of the Respondent or acquired an interest in the Respondent's shares.

41. In response to paragraph 41 of the Amended Statement of Claim, the Respondent:

- (a) repeats its response to paragraph 40 of the Amended Statement of Claim;

- (b) says that during the Relevant Period (except during trading halts) the Respondent's shares were traded on the ASX, which was a financial market regulated by the ASX Listing Rules and section 674(2) of the Corporations Act 2001 (Cth); and
- (c) otherwise does not admit the matters alleged in paragraph 41.

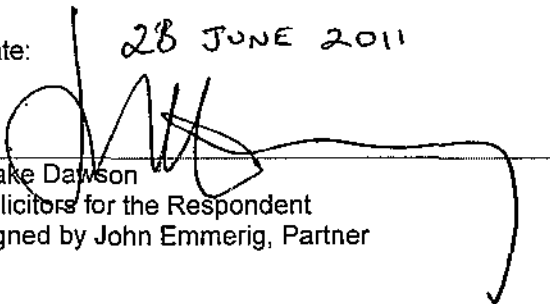
42. The Respondent denies paragraph 42 of the Amended Statement of Claim.

43. The Respondent does not admit paragraph 43 of the Amended Statement of Claim.

44. The Respondent denies paragraph 44 of the Amended Statement of Claim.

Date:

28 JUNE 2011


Blake Dawson
Solicitors for the Respondent
Signed by John Emmerig, Partner

This pleading was prepared by Bret Walker SC, Dr Scott Nixon of Counsel and Blake Dawson, solicitors for the Respondent

SCHEDULE A

Financial half year	Volume sold in \$A (gmt)	Volume sold in \$US (gmt)
1H08	1,454,705	297,823
2H08	1,410,746	402,899
1H09	1,535,906	273,653
2H09	658,835	167,200
1H10	908,435	198,718
TOTAL	5,968,627	1,340,293

SCHEDULE B

Calendar half year	Product grade	\$A BDMT	\$US BDMT	\$US BDU
1H07	Eucalyptus	\$A 167.15		
	Pine		Nil	\$US 150
2H07	Eucalyptus	\$A 166.42		
	Pine		Nil	\$US 152.75
1H08	Eucalyptus	\$A 187.88		
	Pine		\$US 146.52	\$US 166.51
2H08	Eucalyptus	\$A 189.60		
	Pine		Nil	\$US 169.94
1H09	Eucalyptus	\$A 191.30		
	Pine		Nil	\$US 140.50
2H09	Eucalyptus	\$A 191.20		
	Pine		Nil	\$US 143.32

Form 15B
(Order 11, rule 1B)

**IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY**

No. NSD 499 of 2011

BETWEEN

SEAN FOLEY
Applicant

and

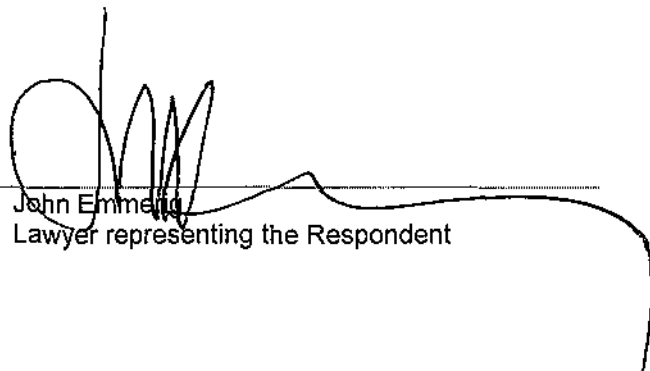
GUNNS LIMITED ACN 009 478 148
Respondent

CERTIFICATE OF LAWYER

I, John Emmerig, certify to the Court that, in relation to the pleading dated 28 June 2011 filed on behalf of the Respondent, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non-admission in the pleading.

Date: 28 June 2011



John Emmerig
Lawyer representing the Respondent

Filed on behalf of the Respondent by
Blake Dawson
Level 36, 225 George Street
Sydney NSW 2000

Tel: (02) 9258 6000
DX: 355
Fax: (02) 9258 6999
Email: john.emmerig@blakedawson.com
Ref: JME 02 2021 4930